

Rule 35. Petition**35.01 Who May Petition; Residency of Petitioner****Subdivision 1. Who May Petition.**

(a) **Generally.** The adopting parent may petition for adoption of the child.

(b) **Child Under Guardianship of Commissioner of Human Services.** The responsible social services agency may petition for the adopting parent to adopt a child who is under the guardianship of the Commissioner of Human Services. The petition shall contain or have attached a statement certified by the adopting parent that the adopting parent desires that the relationship of parent and child be established between the adopting parent and the child and that adoption is in the best interests of the child. An adopting parent must be at least 21 years of age at the time the adoption petition is filed unless the adopting parent is an individual related to the child as defined under Rule 2.01.

Subd. 2. Residency Requirement.

(a) **Child Not Under Guardianship of the Commissioner of Human Services.** Any person who has resided in the state for one (1) year or more may petition to adopt.

(b) **Child Under Guardianship of the Commissioner of Human Services.** An adopting parent for a child under state guardianship may reside within or outside the state of Minnesota.

Subd. 3. Exception to Residency Requirement. The one (1) year residency requirement may be reduced to thirty (30) days by the court in the best interests of the child. The court may waive any residency requirement of this rule if the petitioner is an individual related to the child, as defined in Rule 2.01(19), or as a member of a child's extended family or important friend with whom the child has resided or had significant contact or, upon a showing of good cause, the court is satisfied that the proposed adoptive home and the child are suited to each other.

(Amended effective July 1, 2014.)

35.02 Residency of Child to be Adopted

Unless waived by the court, no petition shall be granted until the child has lived three (3) months in the proposed home, subject to a right of visitation by the Commissioner of Human Services or an agency or their authorized representatives. If the three-month residency requirement is waived by the court, at least ten (10) days' notice of the hearing shall be provided by certified U.S. mail to the local social services agency.

(Amended effective January 1, 2007; amended effective July 1, 2015.)

35.03 Timing

Subdivision 1. Child Not under Guardianship of Commissioner of Human Services. An adoption petition shall be filed not later than twelve (12) months after a child is placed in a prospective adoptive home. If a petition is not filed by that time, the agency that placed the child or, in a direct placement adoption, the agency that is supervising the placement, shall file with the court in the county where the prospective adoptive parent resides, a motion for an order and a report recommending one of the following:

(a) that the time for filing a petition be extended because of the child's special needs as specified under Minnesota Statutes, section 259.22, subdivision 4;

(b) that, based on a written plan for completing filing of the petition, including a specific timeline, to which the prospective adoptive parents have agreed, the time for filing a petition be extended long enough to complete the plan because such an extension is in the best interests of the child and additional time is needed for the child to adjust to the adoptive home; or

(c) that the child be removed from the prospective adoptive home.

Subd. 2. Child Under Guardianship of Commissioner of Human Services.

(a) **Petition Filed Within Nine (9) Months of Adoption Placement Agreement.** An adoption petition shall be filed not later than nine (9) months after the date of the fully executed adoption placement agreement unless the court orders that:

(1) the time for filing a petition be extended because of the child's special needs as defined under title IV-E of the federal Social Security Act, 42 U.S.C., section 672; or

(2) based on a written plan for completing filing of the petition, including a specific timeline, to which the adopting parent has agreed, the time for filing a petition be extended long enough to complete the plan because an extension is in the best interests of the child and additional time is needed for the child to adjust to the adoptive home.

(b) **Petition Not Filed Within Nine (9) Months of Adoption Placement Agreement.** If an adoption petition is not filed within nine (9) months of the execution of the adoption placement agreement, and after giving the adopting parent written notice of its request together with the date and time of the hearing set to consider its report, the responsible social services agency shall file a report requesting an order for one of the following:

(1) extending the time for filing a petition because of the child's special needs as defined under title IV-E of the federal Social Security Act, 42 U.S.C., section 673;

(2) based on a written plan for completing filing of the petition, including a specific timeline, to which the adopting parent has agreed, extending the time for filing a petition long enough to complete the plan because an extension is in the best interests of the child and additional time is needed for the child to adjust to the adoptive home; or

(3) removing the child from the adopting home.

At the conclusion of the review, the court shall issue findings and appropriate orders for the parties to take action or steps required to advance the case toward a finalized adoption, and shall set the date and time for the next review hearing.

Subd. 3. Exceptions - Stepparent and Relative Adoptions. The timing specified in subdivision 1 does not apply to stepparent adoptions or adoptions under Minnesota Statutes, section 259.47, by an individual related to the child not involving a placement as defined in Rule 2.01(19).

(Amended effective January 1, 2007; amended effective July 1, 2014.)

35.04 Conditions for Filing Petition for Adoption of a Child; Exceptions

Subdivision 1. Generally. No petition for adoption of a child may be filed unless the adoptive placement of the child was made by:

(a) the responsible social services agency as agent of the Commissioner of Human Services;
or

(b) a child-placing agency as defined in Rule 2.01(10).

Subd. 2. Exceptions. The requirements of subdivision 1 shall not apply if:

- (a) the child is over fourteen (14) years of age;
- (b) the petitioner is an individual who is related to the child as defined in Rule 2.01(19);
- (c) the child has been lawfully placed under the laws of another state while the child and the petitioner resided in that state;
- (d) the court waives the requirement of subdivision 1 in the best interests of the child and the placement is not made by transfer of physical custody of the child from a biological parent or legal guardian to the prospective adoptive home; or
- (e) the child has been lawfully placed pursuant to an order for direct placement pursuant to Rule 29.

(Amended effective January 1, 2007; amended effective July 1, 2014.)

2014 Advisory Committee Comment

Agency placement cannot be waived for children under the guardianship of the Commissioner of Human Services. Under Minnesota Statutes, section 260C.613, the responsible social services agency has exclusive authority to make an adoptive placement. An adoptive placement is made through a fully executed adoption placement agreement between the adopting parent, the responsible social services agency, and the commissioner. The agency's adoptive placement can be challenged in a motion under Minnesota Statutes, section 260C.607, subdivision 6, and if the prevailing party is not the adopting parent party to the adoption placement agreement, the court may order the agency to make the adoptive placement in the home of the prevailing party.

35.05 Content

Subdivision 1. Case Caption.

(a) **Generally.** In all adoption proceedings, except as otherwise stated in this subdivision, the case caption shall be "In Re the Petition of _____ and _____ (petitioners) to adopt _____ (child's birth name)." In proceedings commenced before the birth of the child being adopted, the case caption shall be "In Re the Petition of _____ and _____ (petitioners) to adopt _____ (unborn child of _____)."

(b) **Child Under Guardianship of Commissioner of Human Services.** The petition shall be captioned in the legal name of the child as that name is reflected on the child's birth record prior to adoption and shall be entitled "Petition to Adopt Child under the Guardianship of the Commissioner of Human Services." The actual name of the child shall be supplied to the court by the responsible social services agency if unknown to the individual with whom the agency has made the adoptive placement.

Subd. 2. Allegations. An adoption petition may be filed regarding one or more children, shall be verified by the petitioner upon information and belief, and shall allege:

- (a) the full name, age, and place of residence of the adopting parent, except as provided in Rule 7;
- (b) if married, the date and place of marriage of the adopting parents, and the name of any parent who will retain legal rights;

(c) the date the petitioner acquired physical custody of the child and from what person or agency or, in the case of a stepparent adoption or adoption by an individual related to the child as defined in Rule 2.01(19), the date the petitioner began residing with the child;

(d) the date of birth of the child, if known, and the county, state, and country where born;

(e) the name of the child's parents, if known, and the legal custodian or legal guardian if there be one;

(f) the actual name of the child, if known, and any known aliases;

(g) the name to be given the child, if a change of name is desired;

(h) the description and value of any real or personal property owned by the child;

(i) the relationship of the adopting parent to the child, if any;

(j) whether the Indian Child Welfare Act does or does not apply;

(k) the name and address of the parties identified in Rule 20;

(l) whether the child has been placed with petitioner for adoption by an agency and, if so, the date of the adoptive placement; and

(m) that the petitioner desires that the relationship of parent and child be established between petitioner and the child, and that it is in the best interests of the child to be adopted by the petitioner.

Subd. 3. Exception to Content. In agency placements, the information required in subdivision 2(e) and (f) shall not be required to be alleged in the petition but shall be provided to the court by the agency responsible for the child's adoptive placement. In the case of an adoption by a stepparent, the parent who is the stepparent's spouse shall not be required to join the petition.

Subd. 4. Attachments. The following shall be filed with the petition:

(a) the adoption study report required under Rule 37 and Minnesota Statutes, section 259.41;

(b) any biological parent social and medical history required under Minnesota Statutes, sections 259.43 and 260C.609, except if the petitioner is the child's stepparent;

(c) the request, if any, under Rule 38.04 to waive the post-placement assessment report and background check;

(d) in the case of a child under the guardianship of the Commissioner of Human Services, a document prepared by the petitioner that establishes who must be given notice of the proceeding under Minnesota Statutes, section 260C.627, subdivision 1, that includes the names and mailing addresses of those to be served by the court administrator;

(e) proof of service, except in the case of a petition for a child under the guardianship of the Commissioner of Human Services under Minnesota Statutes, section 260C.623; and

(f) in the case of a child under the guardianship of the Commissioner of Human Services, the adoption placement agreement required under Minnesota Statutes, section 260C.613, subdivision 1.

Subd. 5. Other Documents to be Filed. The petitioner, or the responsible social services agency in the case of a child under the guardianship of the Commissioner of Human Services, shall file the following documents prior to finalization of the adoption:

- (a) a certified copy of the child's birth record;
- (b) a certified copy of the findings and order for termination of parental rights, if any, or an order accepting the parent's consent to adoption and for guardianship to the Commissioner of Human Services under Minnesota Statutes, section 260C.515, subdivision 3;
- (c) a copy of the communication or contact agreement, if any;
- (d) certification that the Minnesota Fathers' Adoption Registry has been searched as required under Rule 32;
- (e) the original of each consent to adoption required under Rule 33, if any, unless the original was filed in the permanency proceeding conducted under Minnesota Statutes, section 260C.515, subdivision 3, and the order filed under clause (b) has a copy of the consent attached; and
- (f) the post-placement assessment report required under Rule 38.

Subd. 6. Missing Information. If any information required by subdivision 2 or 3 is unknown at the time of the filing of the petition, as soon as such information becomes known to the petitioner it shall be provided to the court and parties either orally on the record, by affidavit, or by amended petition. If presented orally on the record, the court shall annotate the petition to reflect the updated information.

Subd. 7. Acceptance Despite Missing Information. The court administrator shall accept a petition for filing even if, on its face, the petition appears to be incomplete or does not include all information specified in subdivisions 2 and 3. The presiding judge shall determine whether the petition complies with the requirements of these rules.

(Amended effective January 1, 2007; amended effective July 1, 2007; amended effective July 1, 2014; amended effective July 1, 2015.)

35.06 Verification; Signatures

(a) **Generally.** The petition shall be signed and dated by the petitioner and verified upon information and belief.

(b) **Child Under Guardianship of Commissioner of Human Services.** The petition shall be verified as required under Minnesota Statutes, section 260C.141, subdivision 4, and, if filed by the responsible social services agency, shall be approved and signed by the county attorney. If a petition is for adoption by a married person, both spouses must sign the petition indicating willingness to adopt the child and the petition must ask for adoption by both spouses unless the court approves adoption by only one spouse when spouses do not reside together or for other good cause shown. If the petition is for adoption by a person residing outside the state, the adoptive placement must have been approved by the state where the person is a resident through the Interstate Compact on the Placement of Children, Minnesota Statutes, section 260.851.

(Amended effective July 1, 2014.)

35.07 Amendment

Subdivision 1. Uncontested Petitions. An adoption petition may be amended at any time prior to the conclusion of the final hearing pursuant to Rule 41.

Subd. 2. Contested Petitions.

(a) **Prior to Trial.** An adoption petition may be amended at any time prior to the commencement of a trial pursuant to Rule 44. The petitioner shall provide notice of the amendment

to all parties at least seven (7) days prior to the commencement of the trial. When the petition is amended, the court shall grant all other parties sufficient time to respond to the amendment.

(b) **After Trial Begins.** The petition may be amended after the trial has commenced if the court finds that the amendment does not prejudice a party and all parties are given sufficient time to respond to the proposed amendment.

(Amended effective January 1, 2007.)

35.08 Statement of Expenses

Upon the filing of an adoption petition, the agency shall file with the court a statement of expenses that have been paid or are to be paid by the prospective adoptive parent in connection with the adoption. In a direct placement adoption, the statement of expenses shall be filed by the prospective adoptive parent.

(Amended effective January 1, 2007.)